

REMARKS

The present invention allows specific programs to be transmitted prior to their reproduction time and utilizes various messages which provide instructions for a receiver of the specific program to perform actions such as reproducing, deleting, or storing the specific program. (Pg. 18, lns. 5 – 19).

The Office Action rejected Claims 11-18 under 35 U.S.C. § 103(a) as being unpatentable over *Willard* (U.S. 6,374,405) and *Delpuch* (U.S. 5,448,568).

Willard does not teach or suggest “the scheduling unit includes a generation unit to generate (a) first messages which specify the specific program and instruct the receiving apparatus to store the specific program in a storing unit within the receiving apparatus.”

Willard teaches a method of transmitting modules of an interactive program which allows the module to be received at the scheduled delivery time. It accomplishes this by transmitting all packets of a particular module prior to the scheduled delivery time except for a single packet. The single packet is then transmitted at the scheduled delivery time. The last packet is held because a module is not considered delivered until all of the packets are received. (Col. 3, lns. 1 – 9; Col. 4, lns. 32 – 35; Col. 4, lns. 51 – 59)

The Office Action cites to header 58 which is an auxiliary packet. The auxiliary packet contains information to enable the CPU to determine whether the module 51 should be decoded and where it should be loaded into the memory. As noted, in *Willard*, modules comprise components of an interactive application. Thus, modules are not the interactive applications, but a mere piece of the interactive application. Thus, header 58 merely allows a CPU to determine if a piece of the interactive application should be decoded and/or stored into the memory rather than the entire interactive application itself. (Col. 4, lns. 31 – 35).

Furthermore, there is no indication that the header 58 instructs the receiving apparatus to store the specific program. The header when it is an auxiliary packet contains information which allow the CPU to determine whether the module 51 should be decoded and where it should be loaded into the memory. However, enabling a CPU to perform the determination is not an instruction. That is, if auxiliary packet contained an instruction, then CPU would not need to determine whether module 51 should be decoded or not and if it should be decoded, where it should be loaded into the memory. Instead, if auxiliary packet contained an instruction, an instruction would indicate that module 51 should be decoded and it should be stored in a certain location. For example, if a person was given a map of the Washington, D.C., Virginia, and Maryland area, they would have the information necessary to enable them to travel from Alexandria, Virginia to Washington, D.C. after much analysis of the map. The person would have to determine the location he is at within Alexandria by looking at the map, then attempt to locate Washington, and finally attempt to determine what roads lead to Washington. However, if the person was given an instruction to travel from Alexandria to Washington using the George Washington Parkway, then he does not need to analyze the map to determine how to get to Washington from Alexandria.

Depulch also does not teach or suggest “the scheduling unit includes a generation unit to generate (a) first messages which specify the specific program and instruct the receiving apparatus to store the specific program in a storing unit within the receiving apparatus.”

Depulch teaches a method and apparatus for formatting executable codes and data defining interactive applications with audio and video program material. It utilizes modules which may be executable software or data including signal modules which condition receivers of

the interactive applications to suspend or resume execution of an interactive application.
(Abstract).

The Signal in *Depulch* merely discloses that it can be a program to store the current status of the application it was executing. Storing the status of the application it is currently executing is different from storing the actual application itself. (Col. 10, lns. 53 – 64).

Willard also does not disclose “the transmission unit repeatedly transmits contents including scripts control, for a duration from a transmission starting time of the specific program to a reproduction finishing time of the specific program, the transmission unit transmitting the entire specific program at least once prior to the reproduction starting time of the specific program” and the “transmission finishing time is set at the reproduction starting time.”

Willard does not teach that the transmission finishing time is the reproduction start time. Willard discloses the use of a “delivery time” and that the modules must have completed transmission by the delivery time but does not disclose when the exact delivery time should be, and if it should be the reproduction time, prior to the reproduction time, or after the reproduction time. More specifically, there is no teaching that the “delivery time” is when the module is scheduled to start to be reproduced.

Furthermore, even if the delivery time is considered the “reproduction time” and there is no indication that it is, *Willard* teaches that the scheduler causes all of the packets of a module, except the last packet to be transmitted between the start time and the delivery time. The last packet is specifically held until the delivery time and is then transmitted. (Col. 4, lns. 51 – 54). Thus, even if the delivery time is considered the “reproduction time,” the entire module is not delivered prior to the reproduction time.

Depulch also does not remedy the deficiencies of *Willard*.

In contrast, in the present invention, the entire contents data for the specific program is transmitted not in the broadcasting time period, but in the time period immediately before the reproduction time period. For example, if the reproduction time period is 15 seconds, for a specific program. All of the data of the specific program will have been transmitted for a duration of 15 seconds before the start of the reproduction time period and no data for the specific program is transmitted during the reproduction time period. (Pg. 8, lns. 10 – 22).

Applicant submits that any combination of references that must be modified beyond their functions is suggestive of an unintended use of hindsight that may have been utilized to drive the present rejection. This is particularly true for an examiner who is attempting to provide a diligent effort that only patentable subject matter occurs. The KSR Guidelines do not justify such an approach. There is still a requirement for the Examiner to step back from the zeal of the examination process and to appreciate that a Patent Examiner has to wear both hats of advocating a position relative to the prior art while at the same time objectively rendering in a judge-like manner a decision on the patentability of the present claims.

As set forth in MPEP 2142,

To reach a proper determination under 35 U.S.C. §103, the examiner must step backward in time and into the shoes worn by the hypothetical “person of ordinary skill in the art” when the invention was unknown and just before it was made. In view of all factual information, the examiner must then make a determination whether the claimed invention “as a whole” would have been obvious at that time to that person. Knowledge of applicant’s disclosure must be put aside in reaching this determination, yet kept in mind in order to determine the “differences,” conduct the search and evaluate the “subject matter as a whole” of the invention. The tendency to resort to “hindsight” based upon applicant’s disclosure is often difficult to avoid due to the very nature of the examination process. However, impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art.

Willard also does not teach or suggest “a transmission unit repeatedly transmits (a) the first messages for a duration from the transmission starting time to the transmission finishing time of the specific program, wherein the first messages are multiplexed with data modules containing data of the specific program.” In *Willard*, the header 58 which is an auxiliary packet is mixed with data packets 59. Thus, Willard teaches the use of packetization to mix the data packets 59 with header 58 and not multiplexing since the frequency with which the header 58 is sent is determined by the size of the other data packets 59. Since the header is the first packet for the transmission unit 54, it cannot be arbitrarily sent at random time intervals.

There is also no indication that *Delpulch* teaches such features.

All arguments for patentability with respect to Claim 11 are repeated and incorporated herein for Claims 13 -16.

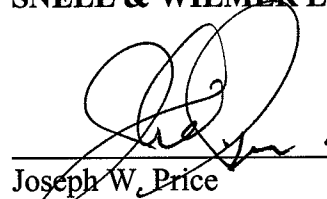
Furthermore, Dependent Claims 12, 13, 17, and 18 depend from and further define Independent Claims 11 and 16 and are thus allowable, too.

For the reasons stated above, Applicant now believes the application is in condition for allowance and early notification of the same is respectfully requested.

If the Examiner believes a further telephone conference would assist in the prosecution, the undersigned attorney can be contacted at the listed phone number.

Very truly yours,

SNELL & WILMER L.L.P.

A handwritten signature in black ink, appearing to read 'Joseph W. Price', is written over a horizontal line.

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